In the Supreme Court of the United States

Supreme Court, U.S.
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OCTOBER TERM, 1971

No. 71-5780

CELESTINO V. RIVAS and ZEFERINO C. SAMANIEGO, individually, and on behalf of all other persons similarly situated,

Appellants,

v.

ROBERT C. COZENS, Director, California Department of Motor Vehicles, and KEITH BALL, Chief, Division of Drivers' Licenses,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

JURIS. STATEMENT NOT PRINTED

Motion to Affirm

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Appellees, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move that the final judgment of the District Court be affirmed on the ground that the decision of said District Court is so clearly correct as to not warrant further argument.

STATEMENT

This case involves a challenge to California's Financial Responsibility Law (Calif. Veh. Code § 16000, *et seq.*) on the ground that it does not afford the driver an adversary hearing upon the question of fault. As construed by the California Supreme Court, the question of fault is determined by the Department of Motor Vehicles on the basis of written sworn statements submitted by those involved in the accident. *Orr v. Superior Court*, 71 Cal. 2d 220, 227; 454 P.2d 712, 716-717 (1969). It is our contention that the Court below correctly ruled in a manner that warrants no further review, that such procedures do not contravene the requirements of due process and are consonant with the holding of this Court in *Bell v. Burson*, 402 U.S. 535 (1971).

ARGUMENT

I. The Principles Embodied in the Equal Protection Clause Afford the Means for Determining What Issues Are Relevant in a Due Process Adjudication.

In essence, our contention is based upon this elemental formulation of the relationship between equal protection and procedural due process: the precept of *equal protection* provides the principles for determining whether a given classification is constitutionally just (*i.e.*, whether "the goals sought are legitimate, and the classification adopted is rationally related to the achievement of those goals." *Richardson v. Belcher*, ... U.S. ....., ...; 92 S. Ct. 254, 258 (1971)). It is the function of the mechanisms of *procedural due process*, on the other hand, to insure when the State proceeds to ascertain whether or not one possesses the characteristics or traits that would bring him within the class, that such ascertainment is accomplished in a fundamentally fair manner. See Tussman and tenBroek,

The Equal Protection of the Laws, 37 Calif. L. Rev. 341, 344-345 (1949). Thus, for example, if a law permitted only lawyers to engage in the business of "debt adjusting", the tests of equal protection would be employed to determine if the law establishes a constitutionally valid classification (see *Ferguson v. Skrupa*, 372 U.S. 726 (1963)). If the classification of "lawyers only" was found to be valid, then the mechanisms of procedural due process would, in the event of a dispute, be employed to ascertain whether a given individual possessed the specified trait or characteristic (*e.g.*, being a lawyer), placing him in the class allowed to engage in the particular business.

In the course of this due process determination, the relevant question would, of course, be whether or not the individual was a lawyer. Obviously, the question of whether the non-lawyer individual possessed sufficient skills and competence to conduct the debt adjusting business, or whether his business was "useful and desirable" (see *Ferguson v. Skrupa, supra,* 372 U.S. at 727), even though he was not a lawyer, would be irrelevant, once it had been determined that the State could properly confine the class of eligibles to lawyers. Thus, while due process would assure the individual the right to a hearing (*i.e.*, the right "to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally", *Goldberg v. Kelly,* 397 U.S. 254, 268 (1970)), with respect to the issue of whether or not he is a lawyer, surely due process would not compel the granting of a hearing on issues (such as competence or usefulness of one's business) that are *not* relevant to determining whether one comes within the assumedly proper statutory class.

Thus, in the context of the above formulation, it can be seen that the elements of equal protection operate as a

gauge of relevancy, providing a direction for due process procedures.

Applying this analysis to the present case, it can be stated that California's Financial Responsibility Law creates the following class of persons who are subject to filing a bond or losing their driver's licenses: those drivers involved in an automobile accident (Veh. Code § 16000) who are uninsured (Veh. Code §§ 16020, 16050, 16057), who do not fall within one of the statutory exemptions (Veh. Code § 16050 *et seq.* See *Orr v. Superior Court, supra,* 71 Cal.2d at 225, fn. 5; 454 P.2d at 715, fn. 5), and against whom the Department has received sworn reports which would support a finding of a "reasonable possibility of a judgment" against the driver. *Orr v. Superior Court, supra,* 71 Cal. 2d at 227-228, 454 P.2d at 716-717. See also Veh. Code § 16000 and Clerk's Record (hereafter CR), p. 15. The obvious purpose of Financial Responsibility Laws "is to obtain security from which to pay any judgments against the licensee resulting from the accident." *Bell v. Burson, supra,* 402 U.S. at 540. See also *Mission Ins. Co. v. Feldt,* 62 Cal. 2d 97, 101 (1964), 396 P.2d 709, 712; and see the first opinion filed by the court below.[1] CR 116. It would seem beyond dispute that this is a "legitimate" State goal (see *Ex Parte Poresky,* 290 U.S. 30, 32 (1933); *Continental Baking Co. v. Woodring,* 286 U.S. 352, 365-366 (1932)) and that the class defined by California's law (uninsured drivers involved in accidents against whom there is evidence giving rise to the reasonable possibility of a judgment), manifestly is "rationally related to the achievement of [this goal]. . . ." *Richardson v. Belcher, supra,* ..... U.S. ....., 92

1. In the course of the proceedings below, the Court filed two opinions. The first opinion (hereafter Opinion I) was filed on May 6, 1971, and is set out in the Clerk's Record on pages 107 to 120. The second opinion (hereafter Opinion II) was filed on July 26, 1971 (after this Court had rendered its decision in *Bell v. Burson, supra*) and is set out in the Clerk's Record on pages 142 to 145.

S. Ct. at 258. And even though the delineation of the class in question might not be precisely congruent with the danger involved, the "rational relation" exists if "the danger is *characteristic* of the class named." (Emphasis added.) *Patsone v. Pennsylvania,* 232 U.S. 138, 144 (1914). Certainly, the chance of being subjected to a judgment arising out of a traffic accident is a dominant "characteristic" of the class delineated by the California statute.

Viewing then the classification as being valid, the question is: what issues are relevant to a due process determination of whether the driver comes within the class which has been specified by the law?

II. The Procedure Employed by the State of California for Determining Whether "There Is a Reasonable Possibility of Judgment" Against the Driver Is Consonant with the Requirements of Due Process and the Ruling of This Court in Bell v. Burson.

A. THE FUNCTION OF A HEARING IS TO ASCERTAIN THE TRUTH OF FACTS WHICH ARE IN ISSUE.

Beyond a doubt, as appellants contend, the right to a hearing is a fundamental component of due process, and we in no way seek to deny the significance of the cases cited by them, which so hold. But equally beyond doubt is the elemental proposition that the function of a hearing is to ascertain the truth of the *matters in issue* between the parties. *Aktiebolaget Svenska Handelsbanken v. Chase Nat. Bank,* 69 F. Supp. 833, 834 (S.D.N.Y. 1947); *Cooney v. Cooney,* 25 Cal. 2d 202, 208; 153 P. 334; 88 C.J.S. Trial § 1, p. 20. Thus to assert the undeniable proposition that due process assures one the right to a hearing still leaves unanswered the question of what issues the hearing must cover. Clearly in the present case, the matter of whether the person in question was actually the driver involved in the accident is such an issue (Veh. Code § 16000). So is the question of whether or not he was insured (Veh. Code

§ 16057). Likewise, the question of whether he comes within one of the statutory exemptions is a relevant issue. (See Veh. Code §§ 16052-16054 and Opinion I, CR 108.)

Therefore, at the outset, it must be stated that as to any facts which are in issue under California's Financial Responsibility Law, there is no doubt that *a licensee is entitled to be heard, and will be afforded a hearing,* should he wish to dispute the Department's determination (see Opinion I, CR 115).

B. ACTUAL FAULT IS NOT AN ISSUE UNDER THE FINANCIAL RESPONSIBILITY LAW.

However, the question of whether or not the person was *in fact* at fault is *not* a relevant issue under California statute with respect to the requirement of an evidentiary hearing, because the element in the legislative classification pertinent to the question of fault is whether the Department has received a sworn statement "which, if later believed by a trier of fact, would render a judgment against the licensee reasonably possible . . . ." (Opinion II, CR 144; see also Opinion I, CR 115.) Hence, the relevant issue at an evidentiary hearing under California's statute, is not the truth or falsity of the statement concerning the driver's fault (see *Orr v. Superior Court, supra,* 71 Cal. 2d at 227-228; 454 P.2d at 716-717), but whether the statement was received by the Department and whether it refers to the driver in question. As appropriately noted by the Court below, determining the issue in this manner is "sufficiently appropriate to the nature of the case and that anything further would not significantly contribute to that kind of a determination." (Opinion II, CR 144.)

The separate question of whether the statement was *legally* sufficient to give rise to the "reasonable possibility of a judgment", is, of course, not the type of question that is resolved upon a "Trial of the facts." *Citizens for Allegan*

County, Inc. v. Federal Power Commission 414 F.2d 1125, 1128.

C. CALIFORNIA'S IMPLEMENTATION OF ITS FINANCIAL RESPONSIBILITY LAW CONFORMS TO THIS COURT'S RULING IN BELL V. BURSON.

In *Bell v. Burson*, 402 U.S. 535, this Court declared that before a license can be suspended under the Financial Responsibility Law, the State must make a "determination of the question whether there is a *reasonable possibility* of a judgment being rendered against [the driver]." (Emphasis added.) 402 U.S. at 542. See also 402 U.S. at 540.

Unlike the Georgia procedures which this Court was considering in *Bell*, California, as noted, *already* expressly requires that the Department of Motor Vehicles determine if there is a "reasonable possibility of a judgment" being rendered against the driver prior to suspending his license. *Orr v. Superior Court, supra*, 71 Cal. 2d at 226-227; 454 P.2d at 716-717. This determination is based upon an evaluation of the written sworn statements of the parties and witness to the accident which are submitted to the Department by the drivers (Veh. Code § 16000; *Orr v. Superior Court, supra*, 71 Cal. 2d at 227; 454 P.2d at 716).

The Department does not resolve conflicts in the submitted evidence but determines "from the accident reports which involved drivers are obligated to make . . . and from other evidence submitted to it whether there is a reasonable possibility that a judgment may be recovered against the involved driver . . . ." *Orr v. Superior Court, supra*, 71 Cal. 2d at 27; 454 P.2d at 716-717. (See Opinion II, CR 144.) However, a driver is certainly entitled, when filing his accident report with the Department, to submit in that report all the evidence he has in support of his version of the accident, and he is entitled to review the evidence upon which the Department makes its determina-

tion, *Orr v. Superior Court, supra,* 71 Cal. 2d at 228, 454 P.2d at 717.[2] Further, he is entitled to assert the contention that the "body of evidence" in question could not support a finding of a "reasonable possibility of a judgment." *Id.* But as we have noted, this is a *legal* contention (see *Lincoln National Life Insurance Company v. Roosth,* 306 F.2d 110, 112-113 (1962)), and, of course, not one requiring a trial to resolve issues of *fact. Citizens for Allegan County, Inc. v. Federal Power Commission, supra,* 414 F.2d at 1128.[3]

In confirming that California's procedures fulfilled the requirements of *Bell,* the Court below observed: "the prior hearing provided by the California statute, based upon required accident reports and other evidence and *involving, not a resolution of conflicting versions* bearing on the ultimate question of liability, but merely the narrow (but constitutionally sufficient) issue whether there is any evidence which, if later believed by a trier of fact, would render a judgment against the licensee reasonably possible, is likewise sufficiently appropriate to the nature of the case and that anything further *would not significantly contribute to that kind of a determination.*" (Emphasis added.) Opinion II, CR 144.

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2. Appellants have asserted that they are not afforded the opportunity to see the evidence against them. Jurisdictional Statement, pp. 6, 8-9. It is clearly the law in California that the driver is entitled to see such evidence. *Orr v. Superior Court, supra,* 71 Cal. 2d at 228; 454 P.2d at 717. If an agent of the Department of Motor Vehicles is acting contrary to this law, there is a remedy in the State court. However, this does not involve the question of the constitutionality of the Financial Responsibility Law, as construed by the California Supreme Court.

3. Should appellants dispute the Department's legal contention in this regard, they are entitled to court review. *Orr v. Superior Court, supra,* 71 Cal. 2d at 226-227; Veh. Code § 14400, and to a stay of any suspension order pending this review. Code Civ. Proc. § 1094.5(f). See *Jennings v. Mahoney,* ..... U.S. ....., ...; 92 S. Ct. 180, 181 (1971), where this Court noted the absence of provisions for a stay under the Utah statute.

But appellants contend that, in addition to presenting evidence establishing their own version of the accident (as is presently provided for under California procedures), they should be permitted to personally appear to "confront and cross-examine adverse witnesses" (Jurisdictional Statement, pp. 8-9). Hence under the procedure sought for by appellants, not only must the Department decide whether there is evidence which, if believed, by the trier of fact could support a judgment (see *Orr v. Superior Court, supra,* 71 Cal. 2d 227-228; 454 P.2d at 717), it must also, at an actual hearing, weigh the evidence and *resolve conflicts; i.e.,* it must decide which of two conflicting versions of the incident to accept. (See Jurisdictional Statement, pp. 9, 10.)

Obviously, this is a "full adjudication of the question of liability," no less than that which would be "made in litigation between the parties involved in the accident." See *Bell v. Burson, supra,* 402 U.S. at 540. But this Court in *Bell,* explicitly stated:

> "Clearly, however, *the inquiry into fault or liability requisite to afford the licensee due process need not take the form of a full adjudication of the question of liability.* That adjudication can only be made in litigation between the parties involved in the accident. Since the only purpose of the provisions before us is to obtain security from which to pay any judgments against the licensee resulting from the accident, we hold that procedural due process will be satisfied by *an inquiry limited to the determination whether there is a reasonable possibility of judgments in the amounts claimed being rendered against the licensee."* (Emphasis added.) 402 U.S. at 540.

California makes precisely this inquiry. *Orr v. Superior Court, supra,* 71 Cal. 2d at 226-227; 454 P.2d at 716-717.

Since this inquiry, as we have noted, clearly corresponds to an appropriate statutory classification, the requirements of equal protection and due process indicate that the inquiry need be no broader.

D. IN THE CASE OF PRE-TRIAL HEARINGS IN OTHER AREAS OF THE LAW, ULTIMATE CULPABILITY IS OFTEN EXCLUDED AS AN ISSUE.

Since the function of the Financial Responsibility Law is to set up a fund that will await disposition upon the parties resolving their dispute at the ultimate adversary hearing, *i.e.*, the lawsuit itself, *Bell v. Burson, supra*, 402 U.S. at 540, the function of the Department is much like that of a court ruling on a demurrer or a motion to dismiss. There the court does not conduct an adversary hearing and resolve conflicts in the evidence. It merely decides whether the alleged evidence, if believed, would support a cause of action. *Alcorn v. Anbro Engineering, Inc.*, 2 Cal. 3d 493, 496; *Madison v. Purdy*, 410 F.2d 99, 100-101 (1969). This is a question of law, not of fact. *MacKay v. Clark Rig Bldg. Co.*, 5 Cal. App. 2d 44, 55 (1935). The ultimate resolution of evidentiary conflicts is, of course, accomplished at the ultimate trial, *i.e.*, "in litigation between the parties...."

Note that this is virtually the same process engaged in by the Department of Motor Vehicles as directed by the California Supreme Court:

> "The department need not decide as between conflicting versions of the accident whether the driver was in fact at fault; if there is any credible evidence on the basis of which he could reasonably be considered culpable, such evidence, which could be believed by the trier of fact in a lawsuit, will suffice to support a determination that it is reasonably possible that a judgment may be recovered against the driver." *Orr v. Superior Court, supra*, 71 Cal. 2d at 227; 454 P.2d at 717.

Another cogent analogy to the financial responsibility procedures are those procedures in the criminal law for

indictment or information *prior to a trial on the merits.* And while one is entitled to a hearing to dismiss an indictment or information (Rule 12 FRCP, 18 U.S.C.; Pen. Code § 995), it is the well-established rule in both the California and Federal courts that the court hearing such a motion may *not* consider evidence to determine the truth or falsity of the charges. *Universal Milk Bottle Service v. United States,* 188 F.2d 959, 962 (1951, 6th Cir.); *People v. Cornette,* 158 Cal. App. 2d 724, 728; 322 P.2d 1001 (1958). As stated by the California Court of Appeal: "On a motion to dismiss under this section neither the trial court nor this court is authorized to weigh the evidence and determine the conflicts. The sole duty is to determine whether there was sufficient evidence presented to the committing magistrate, conflicting or otherwise, which would establish a reasonable probability of defendants' guilt." *People v. Cornette,* 158 Cal. App. 2d, *supra,* at 728; 322 P.2d at 1004. Again, note the marked similarity between this language defining the issues on a motion to dismiss and the State Supreme Court's language in *Orr v. Superior Court, supra,* 71 Cal. 2d at 227-228; 454 P.2d at 717, defining the pertinent issues under the Financial Responsibility Law. And just as the question of actual fault or guilt is irrelevant upon hearing demurrers or motions to dismiss an indictment, *actual* fault is not an issue under the Financial Responsibility Law. *Bell v. Burson, supra,* 402 U.S. at 540, 542; *Orr v. Superior Court, supra,* 71 Cal. 2d at 227-228; 454 P.2d 716-717.

Thus, it can be seen that, in terms of a total legal process, the ultimate issue of culpability is not necessarily relevant at every *intermediate* hearing that might occur during the course of this total process. And certainly, due process can require no more than a hearing on those issues that are relevant.

III. This Honorable Court in Bell v. Burson Recognized That the Problem of Administrative Expense "Must Be Kept in Mind."

California suspends more than 4,000 licenses every *month* (or 53,253 during the 12 months ending in April 1971), pursuant to implementing the Financial Responsibility Law. (Report of General Activities, California Department of Motor Vehicles, 4/30/71.) If the Department would be required to hold a hearing in each of these cases, they would be conducting more trials under this one statute than *all* of the Superior Courts in the entire State of California conducted on *all* contested matters during fiscal 1969-1970.[4] Such hearing would not involve merely the aggrieved party coming before the agency and telling his story, but as contemplated by appellants, *both sides and their witness* would have to be subpoenaed before the Department to give appellants the opportunity to "confront and cross-examine the evidence against them" (see Jurisdictional Statement, p. 9). The expenditure of time and resources necessary to conduct over 4,000 of such proceedings each month is obviously monumental. Can it be said that short of compulsory insurance, this is the only alternative available? The decision in *Bell* would seem to indicate otherwise: "Finally [a state] may reject all of the above and devise an entirely new regulatory scheme. The area of choice is wide . . . ." 402 U.S. at 543.

While it is not doubted that burdens of substantial costs and time cannot afford a justification for dispensing with the requirements of due process, this Court in *Bell* did

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4. During fiscal 1969-1970, the Superior Courts disposed of 46,433 contested cases after trial. Judicial Council of California, 1971 Annual Report, p. 152.

direct that this "problem . . . must be kept in mind" (402 U.S. at 540-541). When the "problem" achieves the formidable dimensions involved in the present case, it surely must be a factor in determining what elements a procedure must embody in order to satisfy the demands of due process. (See *Johnson v. New Jersey,* 384 U.S. 719, 731 (1966), stating that the disruption that would be caused by numerous retrials of criminal defendants is a factor to be considered in denying retroactive application of constitutionally required procedures.)

Surely, the procedures chosen by California, which contemplate a hearing upon all relevant issues, which do involve a determination of "whether there is a reasonable possibility of a judgment", and which are analogous to various procedures followed by the courts, conform to the demands of due process and constitute a valid means of implementing the Financial Responsibility Laws.

CONCLUSION

In the present case the Court below noted the reasonableness of the classification delineated by the California statute (Opinion I, CR 113-117) and that the parties could be heard on any issue relevant under that classification (Opinion I, CR 115). However, it further recognized that since actual fault was not such an issue, due process did not compel an evidentiary hearing upon that question (Opinion I, CR 15; Opinion II, CR 144). Thus, we earnestly contend that the Court below correctly responded to the constitutional principles controlling in this case.

It is, therefore, respectfully submitted that the order and judgment of the Court below (CR 146-147) be affirmed.

Dated: January 17, 1972

Respectfully submitted,

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